

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

KEVIN SHAUNTA JOHNSON,

Defendant-Appellant.

UNPUBLISHED
February 22, 2007

No. 266367
Kent Circuit Court
LC No. 04-005811-FH

Before: Sawyer, P.J., and Fitzgerald and Donofrio, JJ.

PER CURIAM.

Defendant appeals as of right his jury trial conviction for first-degree home invasion, MCL 750.110a(2). Defendant was sentenced as an habitual offender, fourth offense, MCL 769.12, to 6 to 20 years' imprisonment. We affirm. This appeal is being decided without oral argument pursuant to MCR 7.214(E).

On March 15, 2004, at approximately 3:00 a.m., the victim placed an unwanted person call to police when defendant broke down her door, entered her house, woke up her eight-year-old son, and held him in a bedroom until police arrived at the scene. After a stand off wherein police challenged defendant, he released the child. Thereafter, police arrested defendant and located a knife between the wall and the bed, where defendant had held the child. At trial, the prosecution did not call the victim as a witness. Rather, she acted as defendant's witness, testifying that he had her permission to be in the house.

Defendant challenges the sufficiency of the evidence presented at trial for his first-degree home invasion conviction, arguing that the prosecution did not prove the element of "without permission" beyond a reasonable doubt. We disagree.

This Court reviews sufficiency of the evidence claims de novo, viewing the evidence in the light most favorable to the prosecution to determine if the evidence was sufficient for a rational jury to find the defendant guilty beyond a reasonable doubt. *People v McGhee*, 268 Mich App 600, 622; 709 NW2d 595 (2005). The prosecution may offer circumstantial evidence and reasonable inferences as proof of the elements of a crime. *People v Carines*, 460 Mich 750, 757; 597 NW2d 130 (1999). This Court resolves conflicts regarding the evidence in favor of the prosecution, *People v Terry*, 224 Mich App 447, 452; 569 NW2d 641 (1997), and conflicts regarding credibility of witnesses in support of the jury's verdict. *People v Nowack*, 462 Mich 392, 400; 614 NW2d 78 (2000). This Court will not interfere with a jury's role, as factfinder, in determining the weight of the evidence or the credibility of witnesses. *People v Williams*, 268 Mich App 416, 419; 707 NW2d 624 (2005).

First-degree home invasion consists of the following elements: 1) a breaking and entering of a dwelling or entering the dwelling without permission by the defendant; 2) after which the defendant intended to or actually committed a felony, larceny, or assault while entering, being present in, or exiting the dwelling; and 3) the defendant was armed with a dangerous weapon or another person was lawfully present in the dwelling. MCL 750.110a(2); *People v Sands*, 261 Mich App 158, 162; 680 NW2d 500 (2004). MCL 750.110a(1)(c) defines “without permission” as “without having obtained permission to enter from the owner or lessee of the dwelling or from any other person lawfully in possession or control of the dwelling.”

Defendant argues that the prosecution did not present any substantive evidence that defendant entered the purported victim’s house without her permission, and he claims that the evidence revealed that he had permission to enter and also resided at that house. At trial, the victim testified that defendant received mail at her house. Defendant argued that this Court held mail found at a residence supported an inference that a person resided there. See *People v Hardiman*, 466 Mich 417, 423; 646 NW2d 158 (2002). Defendant also contends that the officers made no effort to ascertain whether he lived at that house. However, after being arrested and waiving *Miranda*¹, defendant admitted that he no longer lived at the house and he did not belong there. The prosecution does not have to disprove that defendant lived at that house, but it has to prove the elements of first-degree home invasion. See *Sands, supra* at 162.

On the record before us, we find that the prosecution offered sufficient substantive evidence to support that defendant did not have permission to enter the victim’s house. First, defendant admitted that he no longer lived in the house and he did not belong there. Second, the police responded to the victim’s unwanted person call and she revealed that she did not want the person at her house. Third, the responding officer testified that upon arriving at the scene, the victim was in an excited state and told him that defendant forced open the door and that they had recently broken up their relationship. And, fourth, the doorjamb to the front door was completely broken and the door was swinging wide open when police responded.

While the victim offered testimony to support that defendant was not in the house without permission, the jury determined the credibility of all of the witnesses. This Court will not interfere with that determination. *Williams, supra* at 419. Moreover, in reviewing the case, we resolve conflicts regarding credibility of witnesses in support of the jury’s verdict, *Nowack, supra* at 400. On appeal, viewing the evidence in a light most favorable to the prosecution, we conclude that a rational trier of fact could, and did, find that the prosecution proved the element of “without permission” beyond a reasonable doubt to sustain defendant’s first-degree home invasion conviction. *Sands, supra* at 162.

Affirmed.

/s/ David H. Sawyer
/s/ E. Thomas Fitzgerald
/s/ Pat M. Donofrio

¹ *Miranda v Arizona*, 384 US 436; 86 S Ct 1602; 16 L Ed 2d 694 (1966).